



Conseil du Contentieux des Etrangers de Belgique– Raad van
Vreemdelingenbetwistingen van België

**Association of the Councils of State and the Supreme
Administrative Jurisdictions of the European Union
With scientific support of the Council of Alien Litigations
of Belgium**

**Asylum and immigration law: the
national judge between national and
european standards**

DENMARK

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Questionnaire

PRELIMINARY REMARK

Actions filed by foreign nationals should be understood as those actions concerning asylum-related issues (as per Article 78 of the Treaty on the Functioning of the European Union), and immigration-related issues (as per Article 79 of the Treaty on the Functioning of the European Union).

Due to the legal reservation Denmark is not bound by Article 78 and Article 79 of the Treaty on the Functioning of the European Union.

1. EVIDENCE LAW IN COMPETENT NATIONAL COURTS WITH REGARD TO ACTIONS FILED BY FOREIGN NATIONALS

A) RULES OF EVIDENCE

1. Are the rules of evidence in actions filed by foreign nationals laid down specifically in internal law?

No.

1.1. Do national law or case law rule out certain types of evidence? Where applicable, make a distinction between those actions relating to asylum and those relating to immigration.

No.

1.2. Do national law or case law allow certain presumptions (e.g. in asylum cases, in the event of past persecution or safe countries of origin)? Where applicable, make a distinction between those actions relating to asylum and those relating to immigration.

No.

B) BURDEN OF PROOF

2. What is the role of the parties in the administration of evidence in actions filed by foreign nationals? Where applicable, make a distinction between those actions relating to asylum and those relating to immigration.

The foreign national must (as any other plaintiff seeking judicial review on an administrative decision) provide necessary and relevant information to support his case, unless the review concerns family reunification with minors under section 52 of The Danish Aliens Act. Cf. item B.3. below.

3. Can trial judges play a role in the administration of evidence in actions filed by foreign nationals? If so, on what terms (e.g. do trial judges have the authority to examine evidence in detail or do they give a more marginal assessment)? Where applicable, make a distinction between those actions relating to asylum and those relating to immigration.

Generally trial judges do not play a role in the administration of evidence in actions filed by foreign nationals.

An exception to this is section 52 of The Danish Aliens Act according to which final administrative decisions of family reunification with minors can be brought to the courts by request from the foreign national. In practice this means that the court shall see that all facts of the case are brought out by the immigration authority and shall itself decide on examination of the foreign national and witnesses as well as procuring of other evidence.

In other cases relating to immigration and asylum it is the foreign national who must bring the decision of the immigration authorities before the courts pursuant to section 63 (1) of the Danish Constitution. In these cases the courts have no similar obligation to care for the information as in the cases of family reunification with minors, but can only reject evidence which is not necessary for the proceedings and admit evidence necessary for the proceedings.

In cases relating to immigration the courts may conduct a full review of the evidence question, but are reluctant to overrule the immigration authority's discretion. In addition to this the courts review whether the usual requirements of an administrative decision has been met, including whether the facts involved are relevant and sufficient. Furthermore the courts review whether the legal analysis of the immigration authority is correct. Finally the courts can intervene if the discretion exercised by the immigration authority is manifestly wrong and has led to an unfair result.

In cases relating to asylum the review is rather restraint due to a provision of finality in section 56 of The Danish Aliens Act. The courts can only try certain basic or atypical questions of interpretation, including insufficient foundation of the decision, whether errors of administrative procedure have occurred, and whether unlawful considerations have been taken into account. If the legal action only regards the assessment of evidence of the immigration authority the court will dismiss the proceedings.

C) WEIGHT OF EVIDENCE

4. How and on what terms do trial judges weight the various types of evidence submitted to them in asylum and immigration cases? Is any such weighting determined by national law or by case law? Where applicable, make a distinction between those actions relating to asylum and those relating to immigration.

In cases relating to immigration, there are no rules governing the weight of evidence other than the general principle that judicial review must be free and independent. The evaluation of evidence made by the courts is a thorough examination of whether the immigration authorities have made a concrete examination of the evidence, whether the immigration authorities have focused on false and irrelevant evidence or lacked to obtain material information before the decision was taken.

In cases relating to asylum, Danish courts have no legal basis for trying the examination of the evidence of immigration made by the immigration authorities due to the provision of finality determined in section 56 in The Danish Aliens Act.

5. What powers of review does the supreme administrative court have in assessing the evidential weighting of documents? Where applicable, make a distinction between those actions relating to asylum and those relating to immigration.

Cf. item C.4. above.

2. COMPETENCE OF THE NATIONAL COURT TO ACT OF ITS OWN MOTION IN A EUROPEAN CONTEXT

1. Where the parties raise preliminary questions, can procedural restrictions be applied? For example, at what point in proceedings may the parties submit preliminary questions? Do those questions have to be submitted in a specific written procedural document or can they be submitted at any time, including at the hearing?

The Danish courts have no obligation to raise preliminary questions as the issues of this questionnaire are covered by the Danish reservations.

2. Has the national court already ruled on the issue of direct applicability in your country of Articles 18 and 47 of the Charter of Fundamental Rights of the European Union? If so, is the national court which has jurisdiction to rule on disputes concerning actions filed by foreign nationals able or obliged to raise, of its own motion, arguments from these provisions?

Cf. item 2.1. above.

3. THE NATIONAL COURT AND EUROPEAN INSTRUMENTS

1. Do you regularly refer to European case law when handing down judgements? Have you ever referred to the case law of other Member States when handing down judgements?

It often appears that the courts in cases related to immigration are referring to the European Convention on Human Rights and the decisions of the European Court of Human Rights.

Furthermore it is assumed that the immigration authorities act in accordance with the European Convention on Human Rights and the decisions of the European Court of Human Rights as well as the Geneva Convention of 28. July of 1951 and the interpretations of this convention made by the Court of Justice of the European Communities.

2. Can the national court autonomously interpret Article 1(A) to (F) of the Geneva Convention of 28 July 1951, specifically when abstracting information from Council Directive 2004/83/EC (the so-called Qualification Directive)? Has a conflict ever arisen between the two standards (e.g. in terms of their criteria of attachment or exclusionary clauses)? What solution(s) did the national court adopt, if any?

Due to the legal reservation Denmark is not bound by the directive.

3. Some European Directives contain provisions which do not have to be transposed, including Articles 5(3), 8(1) and (3), and 17(3) of Council Directive 2004/83/EC (the so-called Qualification Directive), Articles 26 and 27 of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (the so-called Procedure Directive) and Articles 4(2) and (3), and 7(1) and (2) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification. Where these provisions have not been transposed, does the national court attach a level of importance to them anyway (soft law, minimal standards, etc.)?

Due to the legal reservation Denmark is not bound by the directive.